

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF MISSISSIPPI  
WESTERN DIVISION

**FRED BECK, Individually and on behalf of the  
Estate of EASTER BECK, Deceased; et al.**

**PLAINTIFFS**

**v.**

**CIVIL NO. 3:03CV60-P-D**

**KOPPERS INC., f/k/a KOPPERS INDUSTRIES,  
INC.; et al.**

**DEFENDANTS**

**CONSOLIDATED WITH**

**HOPE ELLIS, et al.**

**PLAINTIFFS**

**v.**

**CIVIL NO. 3:04CV160-P-D**

**KOPPERS INC., f/k/a KOPPERS INDUSTRIES,  
INC.; et al.**

**DEFENDANTS**

**MOTION TO COMPEL THE COMPLETION OF THE DEPOSITION  
OF JAMES DAHLGREN, M.D., OR, IN THE ALTERNATIVE,  
TO BAR THE TESTIMONY OF DR. DAHLGREN**

DEFENDANTS, Beazer East, Inc. and Koppers Inc. (collectively "Defendants") by their attorneys, move this Court, pursuant to F.R.C.P. 37(a) to compel plaintiffs to present their expert, James Dahlgren, M.D. for two (2) additional days to complete his deposition regarding the first trial plaintiff in this case, Sherrie Barnes. In the alternative, Defendants move this Court to bar Dr. Dahlgren from testifying in this matter. In support thereof, Defendants state as follows:

1. Plaintiffs have refused to produce one of their experts for the completion of his deposition. The purpose of this Motion is to explain to this Court why the deposition is not yet complete and to demonstrate the severe prejudice that will result if Defendants are not allowed to complete the deposition.

2. Plaintiffs contend that substances allegedly released from the Koppers' wood treating plant in Grenada, Mississippi (the "Grenada Plant") gave rise to various

ailments and conditions. Among these conditions is the breast cancer allegedly suffered by the plaintiff whose trial is to proceed first in this matter: Sherrie Barnes.

3. In support of these claims, plaintiffs have produced an expert report by James Dahlgren, M.D. Dr. Dahlgren has opined that Ms. Barnes' breast cancer was caused, in part, by her exposures to polycyclic aromatic hydrocarbons (PAHs) and dioxin from the Grenada Plant. Plaintiffs have produced Dr. Dahlgren for four sessions of his deposition, but have refused to produce him for the two additional days needed to complete his deposition with respect to Sherrie Barnes.

4. Dr. Dahlgren's report totaled 304 pages. His report and accompanying bibliography cited over 225 scientific references. At the third session of his deposition, on May 9, 2005, Dr. Dahlgren produced a new list of references containing well over 1000 scientific articles, some of which duplicated his previously cited articles, but most of which were completely new. Dr. Dahlgren's attempt to ambush Defendants with substantial additional references in support of his opinions, delivered three months after his expert report was due, is a major reason why Defendants have not completed yet his deposition.

5. Defendants have taken four sessions of Dr. Dahlgren's deposition. This is not unusual for Dr. Dahlgren. Owing to the often massive scope of his expert reports, the hundreds of scientific references he routinely cites and his habit of changing his opinions at successive sessions of his deposition. Dr. Dahlgren's depositions almost always run into multiple sessions. In the *Major Andrews v. Kerr-McGee* case (Court No. 1:00 CV 158-D-A) in the Northern District of Mississippi, Defendants took four sessions of Dr. Dahlgren's deposition. In the *Shutes v. Platte Chemical* case (Civil Action No. CI 2002-373) pending in the Circuit Court of Washington County, Mississippi, Defendants have

taken four sessions thus far, and the deposition is not yet complete. Dr. Dahlgren's deposition in *In Re Redlands Tort Litigation* (Case No. RCV 31496) in the Superior Court of San Bernardino, California, ran to twenty sessions. Dr. Dahlgren's opinions are lengthy and complex, and he relies on voluminous published and unpublished sources. Deposing Dr. Dahlgren on his expert opinions sometimes takes a long, long time.

6. In this case, two of the sessions of Dr. Dahlgren's deposition took place before this Court entered its order severing these cases and before plaintiffs chose Sherrie Barnes as their initial trial plaintiff. The questioning during these sessions covered Dr. Dahlgren's qualifications, some of his recent publications, discrepancies in the way in which Dr. Dahlgren reports his data, and superficially touched on his opinions regarding the then twelve plaintiffs in the first trial. Excerpts from transcripts from the four sessions of Dr. Dahlgren's deposition are attached as Exhibit A.

7. The third session primarily addressed testing of the Grenada residents and "non-exposed" persons for dioxin and PAHs. Dr. Dahlgren claims that residents of Grenada were over exposed to dioxins and PAHs. In support of this opinion, Dr. Dahlgren relies on blood tests performed on a group of Grenada residents and on two groups of allegedly non-exposed individuals, one in Jerome, Florida, and one in Greenville, Mississippi. (Ex. A, p. 446).

8. At the beginning of the third session of his deposition, Dr. Dahlgren was asked whether he intended to rely upon the results of his blood testing to support his opinion with respect to Sherrie Barnes. (Ex. A, p. 446). He answered affirmatively, and most of the remainder of the third session of Dr. Dahlgren's deposition was devoted to identifying and discussing Dr. Dahlgren's reports and charts for the dozens of people from whom he collected blood. The remainder of the third session was devoted to

questions regarding the factors that influence levels of PAHs and dioxins in blood and the effects of PAHs and dioxins on human health, with particular emphasis on breast cancer.

9. The fourth session was devoted to questioning Dr. Dahlgren regarding risk factors for breast cancer and the articles he has cited in support of his opinions that exposures to PAHs and dioxin cause breast cancer or increase a person's risk of breast cancer.

10. Despite the best efforts of Defendants, Dr. Dahlgren's deposition is not complete. Dr. Dahlgren has cited over 1200 papers in support of his opinions regarding Sherrie Barnes' breast cancer. Defense counsel has questioned Dr. Dahlgren regarding a large number of these papers, but a significant number of papers remain. Defense counsel could not have been prepared to question Dr. Dahlgren regarding all of his literature references during the last session of his deposition because Dr. Dahlgren produced additional references at the beginning of the third session.

11. It is necessary to question Dr. Dahlgren regarding each of the studies upon which he purports to rely. Despite having listed hundreds of studies as references for the proposition that PAHs and dioxin cause breast cancer, Dr. Dahlgren admitted during the fourth session of his deposition that some of the studies on his reference list are "informative but not directly related" to his opinions. (Ex. A, pp. 798, 807, 811, 819, 838). He has also admitted that some of his references contradict his opinions. (Ex. A, pp. 683, 685).

12. In their letter refusing to produce Dr. Dahlgren for the completion of his deposition, plaintiffs' counsel contends that, on the third and fourth days of Dr. Dahlgren's deposition, defense counsel "chose not to address the Sherrie Barnes case." A copy of plaintiffs' counsel's letter dated June 13, 2004 is attached as Exhibit B. This

statement is so utterly, intentionally and demonstrably false as to be nothing short of mystifying. Defendants spent the entirety of the third and fourth sessions of Dr. Dahlgren's deposition questioning Dr. Dahlgren about Sherrie Barnes and breast cancer. In addition to the descriptions of the third and fourth sessions set forth above, this Court should note:

- (a) That the word "Sherrie" appears 13 times in the transcript of the third session and 38 times in the transcript of the fourth. (Ex. A, pp. 662, 877).
- (b) The word "Barnes" appears 24 times in the transcript of the third session and 48 times in the fourth. (Ex. A, pp. 645, 860).
- (c) The word "breast" appears 25 times in the transcript of the third session and over 200 times in the transcript of the fourth. (Ex. A, pp. 645, 861).
- (d) The word "cancer" appears 63 times in the transcript of the third session and over 300 times in the transcript of the fourth. (Ex., pp. 646, 861).

13. Dr. Dahlgren's deposition has taken a long time because of the enormous amount of information on which he has purported to rely and the fact that he did not identify much of that information until just prior to the third session of his deposition. It is nearly complete, but two additional days will be necessary to finish the deposition as it relates to Sherrie Barnes.

14. In the alternative, if Dr. Dahlgren does not appear for the completion of his deposition, this Court should bar him from testifying at all.

15. On June 15, 2004, counsel for Defendants, Cal Burnton, telephoned counsel for plaintiffs, Hunter Lundy, in an effort to resolve this dispute. Mr. Lundy reiterated his refusal to produce Dr. Dahlgren for additional sessions of his deposition.

Mr. Lundy has also refused to execute a Rule 37.1 affidavit in this matter. See Affidavit of Anthony G. Hopp attached as Exhibit C.

16. Dr. Dahlgren disclosed the vast majority of the bases for his opinions in this case on May 9, 2004, some two and one-half months after the Court-ordered deadline for disclosure of his report, and just moments before the beginning of the third session of his deposition. Further, both his new and pre-existing references are open to question because many of them are irrelevant and some even contradict his opinions. Allowing Dr. Dahlgren to testify without adequate opportunity to depose him on his extensive and sometimes contradictory references would amount to nothing less than trial by ambush, a result that this Circuit has long disfavored. *Shelak v. White Motor Company*, 581 F.2d 1155, 1159 (5<sup>th</sup> Cir. 1978); *Combee v. Shell Oil Co.*, 615 F.2d 698 (5<sup>th</sup> Cir. 1980); *Jimenez v. Tuna Vessel "Grenada"*, 652 F.2d 415, 420 (5<sup>th</sup> Cir. 1981).

WHEREFORE, Defendants, Beazer East, Inc. and Koppers Inc., respectfully request that this Court order plaintiffs to produce James Dahlgren, M.D. two additional days for the completion of his deposition related to Sherrie Barnes, or, in the alternative, to exclude Dr. Dahlgren from testifying at trial.

This is the 22<sup>nd</sup> day of June, 2005.

Respectfully submitted,  
Koppers Inc. and Beazer East, Inc.  
Defendants

By: s/Anthony G. Hopp  
One of their Attorneys

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**CERTIFICATE OF SERVICE**

I, Anthony Hopp, hereby certify that I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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s/Anthony G. Hopp

<p>1 IN THE UNITED STATES DISTRICT COURT  2 FOR THE NORTHERN DISTRICT OF  3 MISSISSIPPI, WESTERN DIVISION  4  5 FRED BECK, ET AL., )  6 Plaintiffs, ) No. 3:03C0-P-D  7 vs. )  8 KOPPERS, INC., ET AL., )  9 Defendants. )  10  11  12  13  14  15 JAMES DAHLGREN, M.D.  16 Santa Monica, California  17 Monday, May 9, 2005  18 Volume III  19  20  21  22 Reported by:  23 DIANA JANNIERE  24 CSR NO. 10034  25 L.A. JOB No. 910791</p>	<p>1 APPEARANCES:  2 For Plaintiffs:  3 LAW OFFICES OF LUNDY &amp; DAVIS, LLP  4 BY: KEITH PRUDHOMME, ESQ.  5 501 Broad Street  6 Lake Charles, Louisiana 70602  7 (337) 439-0707  8 kprudhomme@lundydavis.com  9  10 For Defendants Beazer, Inc., and Koppers, Inc.:  11 WILDMAN, HARROLD, ALLEN &amp; DIXON, LLP  12 BY: ANTHONY G. HOPP, ESQ.  13 225 West Wacker Drive  14 Chicago, Illinois 60606-1229  15 (312) 201-2537  16 hopp@wildmanharrold.com  17 For Defendant Illinois Central Railroad:  18 UPSHAW, WILLIAMS, BIGGERS,  19 BECKHAM &amp; RIDICK, LLP  20 BY: CHRISTOPHER W. WINTERS, ESQ.  21 309 Fulton Street  22 Greenwood, Mississippi 38935  23 (662) 455-1613  24 chris@uwbbbr.com  25</p>																																																				
<p>412</p> <p>1 IN THE UNITED STATES DISTRICT COURT  2 FOR THE NORTHERN DISTRICT OF  3 MISSISSIPPI, WESTERN DIVISION  4  5 FRED BECK, ET AL., )  6 Plaintiffs, ) No. 3:03C0-P-D  7 vs. )  8 KOPPERS, INC., ET AL., )  9 Defendants. )  10  11  12  13  14  15 DEPOSITION of JAMES DAHLGREN, M.D., Volume  16 III, taken on behalf of Defendants at 1700 Ocean Avenue,  17 Santa Monica, California, beginning at 9:10 a.m., and  18 ending at 5:00 p.m., Monday, May 9, 2005, before Diana  19 Janniere, Certified Shorthand Reporter No. 10034.</p>	<p>414</p> <table border="0"> <tr> <td data-bbox="816 1024 1134 1056">1 INDEX</td> <td data-bbox="1248 1024 1444 1056">EXAMINATION</td> </tr> <tr> <td data-bbox="816 1066 1183 1098">2 WITNESS</td> <td data-bbox="1248 1066 1444 1098"></td> </tr> <tr> <td data-bbox="816 1108 1183 1140">3 JAMES DAHLGREN, M.D.</td> <td data-bbox="1248 1108 1444 1140"></td> </tr> <tr> <td data-bbox="816 1151 979 1182">Volume III</td> <td data-bbox="1248 1151 1444 1182"></td> </tr> <tr> <td data-bbox="816 1193 1142 1224">4</td> <td data-bbox="1248 1193 1444 1224"></td> </tr> <tr> <td data-bbox="816 1235 1142 1267">5 MR. HOPP</td> <td data-bbox="1248 1235 1444 1267">420</td> </tr> <tr> <td data-bbox="816 1277 979 1309">6</td> <td data-bbox="1248 1277 1444 1309"></td> </tr> <tr> <td data-bbox="816 1320 1142 1351">7 EXHIBITS</td> <td data-bbox="1248 1320 1444 1351"></td> </tr> <tr> <td data-bbox="816 1362 979 1393">8 DEFENDANTS'</td> <td data-bbox="1248 1362 1444 1393">PAGE</td> </tr> <tr> <td data-bbox="816 1404 1142 1436">9 36 Background Dioxins in House Dusts</td> <td data-bbox="1248 1404 1493 1436">424</td> </tr> <tr> <td data-bbox="816 1446 1142 1478">10 37 Data Summary Sheet (Wet)</td> <td data-bbox="1248 1446 1493 1478">428</td> </tr> <tr> <td data-bbox="816 1488 1142 1520">11 38 Quebec Laboratory Report</td> <td data-bbox="1248 1488 1493 1520">437</td> </tr> <tr> <td data-bbox="816 1531 1142 1562">12 39 Ergo Laboratory Report TEQ</td> <td data-bbox="1248 1531 1493 1562">446</td> </tr> <tr> <td data-bbox="816 1573 1142 1605">13 40 Dr. Dahlgren's Report on Clyde Bailey</td> <td data-bbox="1248 1573 1493 1605">450</td> </tr> <tr> <td data-bbox="816 1615 1142 1647">14 41 Dr. Dahlgren's Report on Randy Barnes</td> <td data-bbox="1248 1615 1493 1647">455</td> </tr> <tr> <td data-bbox="816 1657 1142 1689">15 42 Dr. Dahlgren's Report on Sheila Barnes</td> <td data-bbox="1248 1657 1493 1689">456</td> </tr> <tr> <td data-bbox="816 1700 1142 1731">16 43 Dr. Dahlgren's Report on Franklin Beck</td> <td data-bbox="1248 1700 1493 1731">458</td> </tr> <tr> <td data-bbox="816 1742 1142 1774">17 44 Dr. Dahlgren's Report on Patricia Beck</td> <td data-bbox="1248 1742 1493 1774">459</td> </tr> <tr> <td data-bbox="816 1784 1142 1816">18 45 Dr. Dahlgren's Report on Arthur Blake</td> <td data-bbox="1248 1784 1493 1816">460</td> </tr> <tr> <td data-bbox="816 1826 1142 1858">19 46 Dr. Dahlgren's Report on J. Bradford</td> <td data-bbox="1248 1826 1493 1858">461</td> </tr> <tr> <td data-bbox="816 1869 1142 1900">20 47 Dr. Dahlgren's Report on Dorothy Brown</td> <td data-bbox="1248 1869 1493 1900">464</td> </tr> <tr> <td data-bbox="816 1911 1142 1943">21 48 Dr. Dahlgren's Report on J. Brown</td> <td data-bbox="1248 1911 1493 1943">465</td> </tr> <tr> <td data-bbox="816 1953 1142 1985">22 49 Dr. Dahlgren's Report on Lorethra Brown</td> <td data-bbox="1248 1953 1493 1985">467</td> </tr> <tr> <td data-bbox="816 1995 1142 2027">23 50 Dr. Dahlgren's Report on C.W. Carver</td> <td data-bbox="1248 1995 1493 2027">468</td> </tr> <tr> <td data-bbox="816 2038 1142 2069">24 51 Dr. Dahlgren's Report on Glenda Collins</td> <td data-bbox="1248 2038 1493 2069">469</td> </tr> <tr> <td data-bbox="816 2080 1142 2112">25 52 Dr. Dahlgren's Chart on Sam Conley</td> <td data-bbox="1248 2080 1493 2112">470</td> </tr> </table> <p>415</p>	1 INDEX	EXAMINATION	2 WITNESS		3 JAMES DAHLGREN, M.D.		Volume III		4		5 MR. HOPP	420	6		7 EXHIBITS		8 DEFENDANTS'	PAGE	9 36 Background Dioxins in House Dusts	424	10 37 Data Summary Sheet (Wet)	428	11 38 Quebec Laboratory Report	437	12 39 Ergo Laboratory Report TEQ	446	13 40 Dr. Dahlgren's Report on Clyde Bailey	450	14 41 Dr. Dahlgren's Report on Randy Barnes	455	15 42 Dr. Dahlgren's Report on Sheila Barnes	456	16 43 Dr. Dahlgren's Report on Franklin Beck	458	17 44 Dr. Dahlgren's Report on Patricia Beck	459	18 45 Dr. Dahlgren's Report on Arthur Blake	460	19 46 Dr. Dahlgren's Report on J. Bradford	461	20 47 Dr. Dahlgren's Report on Dorothy Brown	464	21 48 Dr. Dahlgren's Report on J. Brown	465	22 49 Dr. Dahlgren's Report on Lorethra Brown	467	23 50 Dr. Dahlgren's Report on C.W. Carver	468	24 51 Dr. Dahlgren's Report on Glenda Collins	469	25 52 Dr. Dahlgren's Chart on Sam Conley	470
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1 (Pages 412 to 415)

1 A Sure. It is certainly true that when she had  
 2 the cancer and had the chemo, these things can cause  
 3 symptoms. No question. And I don't know in detail how  
 4 to differentiate those two.

5 Q Do you -- can you tell me, then, what symptoms  
 6 Sherrie Barnes had that are consistent with wood  
 7 treating waste induced symptom complex other than her  
 8 breast cancer?

9 A Well, at this point, what I would emphasize is  
 10 that almost everybody we examined in Columbus,  
 11 Mississippi and in this setting, and even in some other  
 12 cases that we are working on, involve creosote.

13 There is sort of a pattern of illness. And  
 14 if -- if -- well, I can't distinguish, as I have stated,  
 15 which of those symptoms were related; but it was worth  
 16 noting that she did have a pattern similar to her means.

17 Having said that, you know, I don't think that  
 18 is an important issue in her case whether or not she had  
 19 any of these symptoms before she developed her cancer  
 20 and had her chemotherapy because of the overriding issue  
 21 here, which is her cancer.

22 So I didn't -- I should have -- if it was  
 23 important and critical for us, I would have inquired  
 24 further about it to distinguish the two.

25 And in terms of putting together my original

1 is that right?

2 A That's right.

3 Q And then you compared the results of those  
 4 Grenada samples, the analysis of those Grenada with  
 5 analyses for other samples and have the opinion that the  
 6 people in Grenada, at least the 29 people that you  
 7 evaluated, was overexposed to dioxin PAH; is that right?

8 A Yes, I did. Those values reflected the group,  
 9 as a whole, had overexposure.

10 Q And you would tend to rely on that work; that  
 11 is, the comparison blood sample work for the purpose of  
 12 your opinions with respect to Sherrie Barnes?

13 A Yes, I mean, we have a lot of other evidence  
 14 that is important here but as part of the total evidence  
 15 would be those blood levels, yes.

16 MR. HOPP: Let's mark as deposition Exhibit  
 17 No. 39.

18 (Defendants' Exhibit 39 was marked for  
 19 identification by the court reporter.)

20 BY MR. HOPP:

21 Q Dr. Dalhgren, I hand you what we have marked as  
 22 deposition Exhibit No. 39. Do you see that?

23 A Yes.

24 Q And deposition Exhibit No. 39 is something that  
 25 I printed off of disks which plaintiff's counsel

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1 report, I included it mainly because of what I said. It  
 2 wasn't consistent with other people.

3 Q But the real issue for Sherrie Barnes is the  
 4 breast cancer?

5 A That's right.

6 Q And we are not going to talk about Sherrie  
 7 Barnes' neurological symptoms or other things?

8 A That's right.

9 Q Because we cannot separate those symptoms from  
 10 pre-chemotherapy and post-chemotherapy?

11 A And as I said, it does not matter anyway. I  
 12 would have spent the time and effort to do and attempt  
 13 that because, let's face it, it is probably knowable. I  
 14 just didn't find out.

15 Q All right. Now, for the purpose of giving your  
 16 opinions on Sherrie Barnes, do you still intend to rely  
 17 on the comparison between the blood samples for PAH and  
 18 dioxin that you obtained for the 25 or 29 other people  
 19 in Grenada and -- strike that. Strike that question.

20 Let me ask it again.

21 For the purpose of your opinions in this case,  
 22 you obtained 29 samples -- blood samples for dioxin  
 23 analysis from Grenada people; is that right?

24 A Yes.

25 Q And you also got 25 samples for PAH analysis;

1 produced in this case as part of responding to defense  
 2 counsel's request for background materials in your  
 3 possession?

4 A Yes.

5 Q Do you recognize the printout as we see in  
 6 Exhibit 39?

7 A No, I don't recall this. This is an Excel  
 8 spreadsheet.

9 Q Does deposition Exhibit No. 39, at least the  
 10 first page of it, accurately reflect the names and dates  
 11 of birth of the 29 background samples -- strike that.

12 Does deposition Exhibit No. 39, at least on the  
 13 first page, accurately reflect the names and dates of  
 14 birth of the 29 people from whom you obtained background  
 15 samples for the purpose of dioxin analysis in Grenada?

16 A Well, I would have to go check the records to  
 17 make sure that the dates of births is correct. I can  
 18 just say, in general, these look like the names that I  
 19 recall were part of the Grenada patients we examined.

20 But I certainly cannot tell -- cannot testify  
 21 about the dates of births without referring to each of  
 22 their records.

23 Q Let's do that. Dr. Dalhgren, we are looking at  
 24 deposition Exhibit No. 39. Let me ask you first. We  
 25 touched on this a little bit.

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9 (Pages 444 to 447)

1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE NORTHERN DISTRICT OF  
 3 MISSISSIPPI, WESTERN DIVISION  
 4  
 5 FRED BECK, ET AL., )  
 6 Plaintiffs, ) No. 3:03CV60-P-D  
 7 vs. )  
 8 KOPPERS, INC., ET AL., )  
 9 Defendants. )  
 10 \_\_\_\_\_ )  
 11  
 12  
 13  
 14  
 15 JAMES DAHLGREN, M.D.  
 16 Santa Monica, California  
 17 Tuesday, May 10, 2005  
 18 Volume IV  
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 22 Reported by:  
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 25 L.A. JOB No. 910792

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1 IN THE UNITED STATES DISTRICT COURT  
 2 FOR THE NORTHERN DISTRICT OF  
 3 MISSISSIPPI, WESTERN DIVISION  
 4  
 5 FRED BECK, ET AL., )  
 6 Plaintiffs, ) No. 3:03CV60-P-D  
 7 vs. )  
 8 KOPPERS, INC., ET AL., )  
 9 Defendants. )  
 10 \_\_\_\_\_ )  
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 14  
 15 DEPOSITION of JAMES DAHLGREN, M.D., Volume  
 16 IV, taken on behalf of Defendants at 1700 Ocean Avenue,  
 17 Santa Monica, California, beginning at 9:00 a.m., and  
 18 ending at 5:00 p.m., Tuesday, May 10, 2005, before Diana  
 19 Janniere, Certified Shorthand Reporter No. 10034.  
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1 (Pages 644 to 647)

<p>1 know whether she had ever used hormonal contraceptives?</p> <p>2 A No. The only medicine she took was high blood</p> <p>3 pressure medicine before the -- before the diagnosis was</p> <p>4 made.</p> <p>5 Q Did her questionnaire specifically ask whether</p> <p>6 she had ever used hormonal contraceptives?</p> <p>7 A No. It simply said, what medicines were you</p> <p>8 taking, and we didn't ask -- I don't remember asking</p> <p>9 specifically about her form of contraception prior to</p> <p>10 the -- in the histories of Sawyer, myself, and Wolfson.</p> <p>11 I did not see any mention of contraceptive use.</p> <p>12 Q And the history was given by her daughter. And</p> <p>13 so, I mean, was it reasonable to assume that her</p> <p>14 daughter may not have that information whether or not</p> <p>15 her mother used --</p> <p>16 A Well, it is not just her daughter, but her</p> <p>17 mother and her sisters were interviewed and none of them</p> <p>18 were aware. It is most likely that she was on birth</p> <p>19 control pills, one of those family members would have</p> <p>20 known it.</p> <p>21 Q But none of them mentioned it; correct?</p> <p>22 A Correct. Thank you. And I believe it would</p> <p>23 have been asked by one or all of us who interviewed the</p> <p>24 family.</p> <p>25 Q Okay. Do you know if she ever used hormone</p>	<p>1 with increasing obesity among premenopausal women. So</p> <p>2 in this study obesity was protective.</p> <p>3 Q In premenopausal women?</p> <p>4 A In premenopausal women, that is what I just</p> <p>5 read.</p> <p>6 Q Okay.</p> <p>7 A The risk was higher among those who were obese,</p> <p>8 but there was no evidence of a trend with increasing</p> <p>9 body mass index.</p> <p>10 Q I'm sorry. That seemed to be contradictory,</p> <p>11 that last sentence?</p> <p>12 A I am just reading from his abstract.</p> <p>13 Q Okay.</p> <p>14 A We can discuss it if you want, but anyway let</p> <p>15 me keep going.</p> <p>16 Q Okay.</p> <p>17 A Risk did not vary with the risk of abortion.</p> <p>18 Risk was lower among postmenopausal women than the</p> <p>19 premenopausal women of the same age. And increased with</p> <p>20 increasing age of menopause, bilateral oophorectomy --</p> <p>21 let me spell that, o-o-p-h-o-r -- reduced the risk more</p> <p>22 than hysterectomy alone; the positive history of benign</p> <p>23 breast disease; a positive family history of breast</p> <p>24 cancer; Jewish religion; 12 or more years of education</p> <p>25 was each independently associated with increased breast</p>
<p>660</p> <p>1 replacement therapy for any purpose?</p> <p>2 A As I said, there was no history of any other</p> <p>3 medication use.</p> <p>4 Q Do you agree that a high body mass index is a</p> <p>5 risk factor for breast cancer?</p> <p>6 A Well, I am trying to remember if that has been</p> <p>7 mentioned as a risk factor. I don't -- let me look in</p> <p>8 my -- I think one of these references does a review of</p> <p>9 the various risk factors. Elm Rich. Elm Rich is a</p> <p>10 review article on risk factors on cancer -- breast</p> <p>11 cancer.</p> <p>12 Q Just for the purpose of the question, I would</p> <p>13 be happy if you could read off your screen what the risk</p> <p>14 factors that are mentioned in Elm Rich?</p> <p>15 A I will do that when it comes up here. This is</p> <p>16 1983, but I think it covers at least some of the more</p> <p>17 popular issues. They studied 1,185 women with breast</p> <p>18 cancer and compared the 3,227 controls. The risk of</p> <p>19 breast cancer increased with increasing age of first</p> <p>20 birth. This effect was not accounted for by parity.</p> <p>21 Q What is parity?</p> <p>22 A The number of pregnancies. An early age of</p> <p>23 first birth appeared to reduce the risk relative to no</p> <p>24 pregnancy; whereas, a late age first birth was</p> <p>25 associated with a higher risk. Relative risk decreased</p>	<p>662</p> <p>1 cancer.</p> <p>2 Now, in terms of that contradiction about</p> <p>3 obesity, we need to go into more detail. Among</p> <p>4 premenopausal women, the relative risk estimate</p> <p>5 decreased as body mass index increased and the trend was</p> <p>6 that statistically significant. Among postmenopausal</p> <p>7 woman the opposite effect was evident relative to the</p> <p>8 BMI of under 30.</p> <p>9 The relative risk estimate was 1.5, with</p> <p>10 confidence interval of 1.2, 1.9, and that was for</p> <p>11 postmenopausal woman and that was the body mass index</p> <p>12 was under 30, the relative risk was higher.</p> <p>13 Q In postmenopausal?</p> <p>14 A Postmenopausal does not apply to our patient</p> <p>15 who was not postmenopausal.</p> <p>16 With a body mass index over 30, there was no</p> <p>17 evidence with a trend for a relative risk of increased</p> <p>18 cross-categories of increasing body mass.</p> <p>19 Q So over 30, there is no increasing trend in</p> <p>20 both pre and post or --</p> <p>21 A Correct. So I think the answer is -- and I</p> <p>22 think this is one of the biggest studies of that issue.</p> <p>23 It does not appear that obesity is a major factor.</p> <p>24 Let's put it that way. It may contribute in</p> <p>25 some way, but it says among premenopausal, which is our</p>

1 medical clinic where the detoxification has been done  
 2 for the last two plus years.  
 3 Q Do you know Rita Weinberg?  
 4 A Yes.  
 5 Q Have you worked with Rita Weinberg on anything  
 6 other than the detoxification project?  
 7 A No, she doesn't really work on it anyway. She  
 8 is just one of the friends of Keith Miller who  
 9 frequently accompanies him on his enterprise or visits  
 10 to New York.  
 11 Q Do you know Jim Woodworth?  
 12 A Yes. He is the administrator of the downtown  
 13 medical clinic.  
 14 Q Has he also – he also worked for Health Med in  
 15 Sacramento?  
 16 A Yes. He used to run that clinic.  
 17 Q Did you work with Jim Woodworth on anything  
 18 other than the detoxification project?  
 19 A No.  
 20 Q Are you aware of any studies that correlate PAH  
 21 and dioxin exposure with breast cancer strains that are  
 22 resistant to treatment?  
 23 A I have not seen any data on distinguishing  
 24 cancers that are resistant to therapy versus cancers  
 25 that are more responsive to therapy.

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1 the house and had the baby at '61. She had to be at  
 2 least 18.  
 3 MR. WINTERS: I thought she was 69 or 70, in  
 4 that range.  
 5 THE WITNESS: The risk drops off as you get  
 6 older, you pass certain milestones in age, but it is  
 7 usually a little older than that. She is probably still  
 8 at risk for breast cancer.  
 9 BY MR. HOPP:  
 10 Q Do you think Kenesha Barnes is at increase risk  
 11 for breast cancer?  
 12 A Yes.  
 13 Q Based on environmental exposure?  
 14 A Based on environmental exposures. And the  
 15 sister, the two sisters, and if there is an interaction,  
 16 and I believe there is the environmental factor and host  
 17 factors; then they would be at increase risk based on  
 18 environmental exposure plus the history.  
 19 Q You believe then – just to be clear then, you  
 20 believe that Kenesha Barnes is at an – you believe that  
 21 Kenesha Barnes is at an increased risk for breast cancer  
 22 based in part on the fact that her mother and her  
 23 maternal aunt had breast cancer?  
 24 A Yes.  
 25 Q Do you believe that Kenesha Barnes – strike

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1 Q Are you aware of any studies that correlate PAH  
 2 or dioxin exposure with breast cancer strains that are  
 3 likely to metastasize?  
 4 A I have never seen studies that differentiate in  
 5 that way.  
 6 Q All right. Can you quantitate Sherrie Barnes'  
 7 risk for breast cancer using the Gail Model? G-a-i-l.  
 8 A No, I don't know how to do that.  
 9 Q Do you know what the Gail Model is?  
 10 A No.  
 11 Q Do you think that Sherrie Barnes' mother Mary  
 12 Barnes is at increase risk for breast cancer?  
 13 MR. PRUDHOMME: At present?  
 14 MR. HOPP: At present.  
 15 THE WITNESS: Oh, gosh, I don't know. Let's  
 16 see. I don't remember what her mother's history is.  
 17 BY MR. HOPP:  
 18 Q Well, if – if I can refresh you, I believe  
 19 that Sherrie Barnes' mother testified that she moved  
 20 into the house in Carver Circle in 1961 or so, just  
 21 before Sherrie was born and she lives there today.  
 22 A And she is now in her 60's?  
 23 Q I think so. I'm not quite sure how old she is.  
 24 Probably in her 50's or 60's.  
 25 A Well, she had to be in her 60's and moved into

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1 that.  
 2 Do you believe that Sherrie Barnes' sisters are  
 3 at an increased risk for breast cancer?  
 4 A Yes. I think the sisters – I should have  
 5 found out, I guess, but I don't know where in the birth  
 6 order Sherrie Barnes is. And what is her name? Kay  
 7 Hobbs. I don't know if the sisters are older or  
 8 younger. I just don't remember, but I think they would  
 9 be at increased risk probably because of exposure.  
 10 Probably exposure. I have to confirm that, but  
 11 if they were, indeed, exposed in the Carver Circle home,  
 12 they would also be at increased risk.  
 13 Q Do you think that they, the sisters of Sherrie  
 14 Barnes and Kay Hobbs, also has a host factor that would  
 15 increase their risk?  
 16 A Yes.  
 17 Q Are you aware of any studies indicating that  
 18 TCDD is chemoprotective for breast cancer?  
 19 A Yes.  
 20 Q Are you aware of any studies indicating that  
 21 PCBs – certain particular PCB congeners are  
 22 chemoprotective for breast cancer?  
 23 A No, I am not aware of that. I have not  
 24 reviewed that particular question but ClIT, C-I-I-T,  
 25 composed a paper, did some rat studies that showed that

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<p>1 TCDD is reduced, and prevents the breast cancers, but  2 reduces the numbers and prolongs the time that it took  3 for the PAH that they used to induce the man-making  4 cancer to occur.</p> <p>5 So it was a study that indicated that the TCDD  6 somehow had a – what they thought was an anti-estrogen  7 effect. And that that allowed it to then reduce the  8 potency of the, you know, chemical that was used to  9 induce the brain cancer -- breast cancer in an animal  10 study.</p> <p>11 Q Would you characterize that study as junk  12 science?</p> <p>13 A No. It is an interesting study.</p> <p>14 Q A lot of what we talked about earlier today  15 with respect to breast cancers and risk-factors sort of  16 the common thread running through a lot of those risk  17 factors is estrogen; is that right?</p> <p>18 A Yes. It is felt that breast cancer is at least  19 one of the mechanisms and one of the factors is  20 estrogen. Some kind of interaction with other factors,  21 obviously, because estrogen is a normal necessity for  22 normal development, but there could be some kind of  23 derangements.</p> <p>24 So maybe with higher levels which is why birth  25 control pills, hormone replacement, are suspected to be</p>	<p>1 Q Are you aware of other studies that discusses  2 the issue of administering TCDD to rats during pregnancy  3 and following their offspring for incidents of breast  4 cancer?</p> <p>5 A The other paper that I was talking about was  6 Birnbaum, B-i-r-n-b-a-u-m, 2003. "Prenatal exposure to  7 natural and synthetic estrogens is associated with  8 increases in breast and vaginal tumors in humans as well  9 as uterine tumors in animals. And then they talk about  10 these issues.</p> <p>11 Q This is Birnbaum and Fenton?</p> <p>12 A Correct.</p> <p>13 Q 2003?</p> <p>14 A Correct.</p> <p>15 Q The title is Cancer and Developmental Exposure  16 to Endocrine Disruptors?</p> <p>17 A That's right.</p> <p>18 Q National Health and Environmental Effects  19 Research Lab?</p> <p>20 A That's right. It is a review paper, and she  21 talks about these various issues that I just mentioned.  22 See, if I can find the other section, she talks  23 about dioxins. The term dioxins is used for members of  24 the PHAHS, that would be polyhalogenated aromatic  25 hydrocarbons, that are structurally related and have</p>
<p>684</p> <p>1 increasing the risk because you have an increased amount  2 of estrogen that somehow creates an imbalance.</p> <p>3 Q And something that is an anti-estrogen is, at  4 least in theory, are potentially chemoprotective for  5 breast cancers?</p> <p>6 A Yes. And there hasn't been any follow-up that  7 I am aware of that looked at that question, but the  8 other side of the coin is, that a study was done also in  9 rats where they exposed the fetus by exposing the mother  10 rat to TCDD in a single dose during pregnancy – and  11 early on in the pregnancy, and then looked at the breast  12 cancer risk in that fetus when it grew – grew up.</p> <p>13 And interestingly enough, there was an increase  14 in risk of breast cancer in that setting. So the timing  15 of the TCDD exposure is important in terms of breast  16 cancer risk.</p> <p>17 Q And I think you mentioned that study yesterday.  18 Is that contained within your bibliography?</p> <p>19 A Yes.</p> <p>20 Q Can you tell me the name of that particular  21 study?</p> <p>22 A Let me check to see in here what I thought it  23 was. At least one of the papers addresses this question  24 is the Vorder Strasse, V-o-r-d-e-r, S-t-r-a-s-s-e, paper  25 and the other – let me look at the reference list here.</p>	<p>686</p> <p>1 similar halogen substitution patterns are persistent and  2 bioaccumulative, and have a common spectrum of  3 biological responses mediated via binding to a specific  4 high-affinity cellular protein, the aryl hydrocarbon  5 receptor.</p> <p>6 The prototype chemical for this class of dioxin  7 or TCDD, and it goes on to discuss its developmental  8 toxicity.</p> <p>9 Let me see if I can find it.</p> <p>10 Q 128.  11 (Defendants' Exhibit 128 was marked for  12 identification by the court reporter.)</p> <p>13 THE WITNESS: Let's see if she says that.</p> <p>14 BY MR. HOPP:</p> <p>15 Q Are you finished looking for it?</p> <p>16 A No. I am looking at this prenatal -- this  17 whole section called Prenatal Endocrine Destruction and  18 Mammary Tumors. It is on – you got the page in front  19 of you? It is on Page 392.</p> <p>20 Q And just for the record, we have marked the  21 review paper as deposition Exhibit 128.</p> <p>22 A Yes. And here is Brown.</p> <p>23 Q So she is citing a paper by someone named  24 Brown?</p> <p>25 A Yeah. Brown is the other paper which is the</p>

<p>1 A Yes.</p> <p>2 Q What relevance does it have to Sherrie Barnes?</p> <p>3 A Well, that's a good question. The mechanism of</p> <p>4 breast cancer in men is possibly different than the</p> <p>5 breast cancer in women.</p> <p>6 I mean, men and women's breast cancer may have</p> <p>7 a different etiology. I think probably the important</p> <p>8 issue here is this would be support of these chemicals</p> <p>9 that were, in this case, particularly the benzene and</p> <p>10 the PAHs are present in our case here.</p> <p>11 And the implication of the study was that there</p> <p>12 was an increased risk that they thought was attributable</p> <p>13 to these exposures and this is a one case report.</p> <p>14 It is not terribly important to our overall</p> <p>15 case, but it is – let's go to the last paragraph where</p> <p>16 he discusses this issue:</p> <p>17 He basically talks about, "The</p> <p>18 Elevated risk of breast cancer</p> <p>19 Among men, occupational exposed</p> <p>20 Gasoline and combustion products</p> <p>21 Has not been reported previously</p> <p>22 Except in one small study with</p> <p>23 nonsignificant odds ratio of 1.3.</p> <p>24 However, two recent studies show an</p> <p>25 increase in breast cancer in women</p>	<p>1 to these chemicals that developed a rare disease.</p> <p>2 Oftentimes rare diseases, like men's breast</p> <p>3 cancer or mesothelioma can give us a lot of clues and</p> <p>4 should be followed up when they occur.</p> <p>5 Q Would it be fair to characterize the Hansen</p> <p>6 paper as generally informative, but not directly related</p> <p>7 to the cause of Sherrie Barnes' breast cancer?</p> <p>8 A Yes.</p> <p>9 Q In fact, the article does not calculate the</p> <p>10 relative risk for breast cancer in women; is that right?</p> <p>11 A Correct.</p> <p>12 Q And at what exposure level does the study</p> <p>13 indicate that breast cancer has increased in men?</p> <p>14 A Well, he has got an odds ratio here of 2.2 with</p> <p>15 no lag time and 2.5 with ten years of lag time with</p> <p>16 statistical significance.</p> <p>17 Q Lag time being years of exposure? What does</p> <p>18 lag time mean?</p> <p>19 A No. What that does is it allows for more</p> <p>20 latency.</p> <p>21 Q Okay.</p> <p>22 A In other words, you look at the people's</p> <p>23 exposure and then you make sure that you are at least</p> <p>24 allowing for ten years of lag time from the time of</p> <p>25 exposure to the time of the disease diagnosis.</p>
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<p>1 exposed to benzene and PAHs."</p> <p>2 Which is the Petralia study, I believe is also</p> <p>3 on this list. I know it is on my new list.</p> <p>4 And it is here on this list; and then he</p> <p>5 states, "The similarities among some of</p> <p>6 The known risk factors for breast</p> <p>7 Cancer in men and women and a</p> <p>8 Similar variation in incidents</p> <p>9 Point to common etiologic factors;</p> <p>10 therefore, gasoline and combustion</p> <p>11 products caused breast cancer in</p> <p>12 Men. It probably does so in women,</p> <p>13 too."</p> <p>14 And then it goes on to discuss some other</p> <p>15 things.</p> <p>16 Q So the author is hypothesizing that this result</p> <p>17 that he obtained in this paper might be applicable to</p> <p>18 women, as well; is that fair?</p> <p>19 A Yes, and then he alludes to some other studies</p> <p>20 that showed he doesn't do an exhaustive review. Where</p> <p>21 we actually know that there are other papers that he</p> <p>22 could have cited.</p> <p>23 Q Sure. And we will get to those.</p> <p>24 A But the point is that it is just another study</p> <p>25 of a case of someone who has some pretty good exposures</p>	<p>1 Q Is it accurate to say that the Hansen study</p> <p>2 doesn't examine specific exposure levels, but rather</p> <p>3 looks at occupational exposure of gasoline and</p> <p>4 combustible products in general?</p> <p>5 A Yeah, 230 male employees were members of the</p> <p>6 National Pension Fund and the country is Denmark. And</p> <p>7 he looks at job title for exposure.</p> <p>8 Q Okay. So there is no exposure data for the</p> <p>9 individual study subject?</p> <p>10 A No.</p> <p>11 Q Next one on your list – your breast cancer</p> <p>12 reference list number eight is the Holford,</p> <p>13 H-O-L-F-O-R-D, study?</p> <p>14 A Yes.</p> <p>15 Q Handing you what we have marked as Deposition</p> <p>16 Exhibit No. 138. This is a copy of the Holford study.</p> <p>17 The Holford study is entitled Joint Effects of Nine</p> <p>18 Polychlorinated Biphenyl (PCB) Congeners on Breast</p> <p>19 Cancer Risk; is that right?</p> <p>20 (Defendants' Exhibits 138 was marked for</p> <p>21 identification by the court reporter.)</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MR. HOPP:</p> <p>24 Q And Holford looked at nine PCB congeners;</p> <p>25 right?</p>
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1       Are positively associated with breast  
2       cancer risk, while others are negative";  
3       is that right?  
4       A   Well, if you look at the standard coefficient,  
5       the first line, when it says, negative .021, that means  
6       that the higher the PCB level of the congener, the lower  
7       the breast cancer risk.  
8       Q   All right.  
9       A   So that is right. There were three – four  
10      that were negative and then one, two, three, four, five  
11      that were positive.  
12      And 180 was the most positive statistical and  
13      it reached almost statistical significance and 183 did.  
14      Q   And in the Discussion section, this is on Page  
15      979, the authors point out that, "The  
16      Association of total PCB exposure with  
17      breast cancer risk in this analysis was  
18      estimated to be small and inverted."  
19      Is that what you are talking about?  
20      A   Yes, for those who had it – the higher the  
21      level, the lower the risk, suggesting – I think, you  
22      know, you can find and do these fancy statistics. You  
23      can find things like this. That may not mean anything.  
24      The most important thing here is to look at all  
25      the congener correlations, and 180 and 183, again,

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1       people get this disease, that anything that contributes  
2       to the risk is important to address.  
3       Q   Is this a case control study?  
4       A   This is a biomarker study. I mean, there is  
5       cases and controls. What they are doing is they are  
6       studying the presence of a biomarker in PCBs in two  
7       populations to see if the testing hypothesis that the  
8       cases would have a higher level of these chemicals than  
9       the controls.  
10      And the answer is, yes, and it does show  
11      correlation.  
12      Q   Does this study indicate what dose of any  
13      particular PCB congener is necessary to cause an  
14      increased risk of breast cancer?  
15      A   No, I mean, if you look at the – I don't think  
16      there is a single measurement in this whole paper. It  
17      is all statistical analysis.  
18      Let me just see. Maybe they are mentioned  
19      somewhere. The level – no, what they are really trying  
20      to do is the correlation or the association of the  
21      chemical versus the risk. And that is not going to give  
22      you thresholds or slope factors.  
23      Q   The next paper in order on your reference list,  
24      this is number nine, is the Hoyer paper; is that right?  
25      A   Yes.

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1       correlates strongly with the total congeners.  
2       In other words, you are getting a positive  
3       effect on the breast cancer. And like the other studies  
4       we have looked at, if you add up all of the PCB  
5       congeners, that also correlates with breast cancer risk.  
6       So what it would suggest is that the overall  
7       mixture, maybe some components being more important than  
8       others, is contributing to the risk; and that the  
9       negative components do not outweigh the positive  
10      components in terms of causing the effect that we are  
11      seeing in the increased risk.  
12      Q   But they do balance out and that is why the  
13      authors say that the overall risk is small?  
14      A   That's correct.  
15      Q   And they go on in the Discussion section and  
16      say, "These results suggest that some  
17      Congeners have a protective effect on  
18      breast cancer risk, while others are  
19      associated with an increased risk"; is  
20      that right?  
21      A   That's right. That is correct.  
22      And I think that is consistent with all the  
23      data. It shows that there is a small but significant  
24      increase in risk. And the reason it is important is  
25      that there are so many dam people exposed and so many

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1       Q   I am handing you what we have marked as  
2       deposition Exhibit No. 139.  
3       (Defendants' Exhibits 139 was marked for  
4       identification by the court reporter.)  
5       BY MR. HOPP:  
6       Q   Is this the Hoyer paper?  
7       A   Yes.  
8       Q   And it is entitled Organochlorine Exposure and  
9       Risk of Breast Cancer. What question was Hoyer trying  
10      to answer?  
11      A   The same question. He looked at Dieldren,  
12      which is an organochlorine. He looked at  
13      chlorocyclohexane, which is another pesticide,  
14      organochlorine pesticide.  
15      Q   Did this study look particularly at TCDD or  
16      dioxin?  
17      A   No, it looked at PCBs, DDE, but it did not look  
18      at dioxin per se.  
19      Q   So this would be another study that is  
20      generally informative, but it is not directly related to  
21      Sherrie Barnes; is that right?  
22      A   Yes. For the reasons that I indicated earlier,  
23      I thought it was relevant.  
24      Q   And they actually looked at serum levels; is  
25      that correct?

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41 (Pages 804 to 807)

<p>1 A Yes.</p> <p>2 Q So these are blood samples and not tissue</p> <p>3 samples?</p> <p>4 A Yes, serum sampling. That is right.</p> <p>5 Q The Result section indicates that,</p> <p>6 "The risk of breast cancer decreased</p> <p>7 with increasing number of full-term</p> <p>8 pregnancies and increased with" — I'm</p> <p>9 sorry — "and increasing with body</p> <p>10 weight and height."</p> <p>11 Do you see that?</p> <p>12 A Where are you reading from?</p> <p>13 Q The Result section; this is Page 1818 starting</p> <p>14 right above that table.</p> <p>15 A "Increasing number of full-term</p> <p>16 Pregnancies and increasing with</p> <p>17 Body weight and height."</p> <p>18 So height was made a standard.</p> <p>19 Q You wouldn't think so. But Hoyer at least</p> <p>20 concludes that increasing body weight and height are a</p> <p>21 risk factor; is that right?</p> <p>22 A This is the first time I have ever seen height</p> <p>23 as a risk factor for anything. And unmarried women had</p> <p>24 an 89 percent higher risk than married women. It is</p> <p>25 probably because they didn't have babies.</p>	<p>1 influence on the risk of breast cancer."</p> <p>2 Is that right?</p> <p>3 A Yes, in this study, they did not find an</p> <p>4 increase in breast cancer. That's correct.</p> <p>5 Q The next study in order under List of Breast</p> <p>6 Cancer References is the — maybe you can pronounce it</p> <p>7 for me. Kogevinas paper?</p> <p>8 A Kogevinas is as good as any.</p> <p>9 Q Kogevinas, K-O-G-E-V-I-N-A-S.</p> <p>10 I am handing you what we have marked as</p> <p>11 deposition Exhibit No. 140, which is the Kogevinas</p> <p>12 paper.</p> <p>13 (Defendants' Exhibits 140 was marked for</p> <p>14 identification by the court reporter.)</p> <p>15 BY MR. HOPP:</p> <p>16 Q Now, this is a review article; is that right?</p> <p>17 A It is.</p> <p>18 Q So it doesn't report on a new experiment, but</p> <p>19 rather discusses studies done by other people?</p> <p>20 A Yes.</p> <p>21 Q And does Kogevinas find — well, let me — what</p> <p>22 does Kogevinas conclude, generally, based on the other</p> <p>23 studies?</p> <p>24 A More studies are needed. That was his main</p> <p>25 conclusion, but he reviews some of the studies and it is</p>
<p>808</p> <p>1 Q Moving on down this page, this is 1818. It</p> <p>2 says, "We found a slight increase in</p> <p>3 Risk of breast cancer with increasing</p> <p>4 concentrations of BHCH, but no</p> <p>5 association was apparent for total</p> <p>6 DDT or total PCBs."</p> <p>7 Do you see that?</p> <p>8 A Um-hmm.</p> <p>9 Q So this study tends to conflict with some of</p> <p>10 the other studies which have indicated PCBs increase the</p> <p>11 risk of breast cancer?</p> <p>12 A Well, they did 28 PCBs. They don't tell us</p> <p>13 which ones. So this wasn't as detailed a congener</p> <p>14 analysis as the others.</p> <p>15 They do list them here. And — yes, they just</p> <p>16 didn't find a correlation.</p> <p>17 Q And then the Conclusion, which is on the last</p> <p>18 page states, "Our results support the</p> <p>19 Hypothesis that organochlorine</p> <p>20 compounds, such as dieldrin,</p> <p>21 which have oestrogenic properties,</p> <p>22 May increase the risk of breast cancer.</p> <p>23 They do not, however, suggest that</p> <p>24 exposure to total PCB, total DDT,"</p> <p>25 And I guess, "P prime-DDE have any</p>	<p>809</p> <p>1 interesting in that respect.</p> <p>2 Q And that is, again, generally informative, but</p> <p>3 not particularly relevant to Sherrie Barnes?</p> <p>4 A Correct. He gives a list of the various</p> <p>5 studies and notes, you know, the breast cancer,</p> <p>6 including male breast cancer, has been found to be</p> <p>7 increased.</p> <p>8 Q He finds increasing mortality from breast</p> <p>9 cancer that is not statistically significant; is that</p> <p>10 right?</p> <p>11 A Yes.</p> <p>12 Q That is in Table 5?</p> <p>13 A Yes. Table 5 he is looking at — where is</p> <p>14 that? He has got different references 170 — where is</p> <p>15 it? I am trying to see what his references are for</p> <p>16 that.</p> <p>17 Anyway, he — I guess, IARC's international</p> <p>18 cohort study of phenoxy herbicides or chlorophenols</p> <p>19 where TCDD was presumed to be present and the SMRs are</p> <p>20 elevated for all of the cancers, but all malignant</p> <p>21 neoplasms are statistically significantly increased.</p> <p>22 And the individual types of cancer, breast</p> <p>23 female is almost statistically significant. The odds of</p> <p>24 SMR is 2.16, but the confidence interval is at .99. We</p> <p>25 are talking about 100ths off. Otherwise, it would be</p>

1 A Although there is no independent association,  
 2 blah, blah, blah -- yeah, the point of this paper is  
 3 that if you look at the nurses who have this particular  
 4 polymorphism, CYP1A1-exon 7, this is a risk factor for  
 5 breast cancer.  
 6 Q Okay.  
 7 A And I think what they found was --  
 8 Q Was what he found that this was a genetically  
 9 susceptible population?  
 10 A Correct.  
 11 Q Okay. Doctor, do you want to continue with  
 12 your answer?  
 13 A What they say here is, "However  
 14 High levels of PCBs may be associated  
 15 with breast cancer risk in the subgroup  
 16 of women who have variant  
 17 CYP1A1-exon 7 polymorphism."  
 18 Additional studies are needed to examine  
 19 that possibility.  
 20 Q That is CYP1A1-exon 7 polymorphism, that is  
 21 something to do with the particular genetic structure of  
 22 these women; is that right?  
 23 A Yes.  
 24 Q It is a gene?  
 25 A Their ability to transform the PCBs or handle

1 or not it would be relevant to test her.  
 2 Q This study looks at latent PCBs, correct?  
 3 A Correct.  
 4 Q Doctor, I have handed you what we have marked  
 5 as Exhibit 142. This is the next reference on your  
 6 breast cancer list. It is number 12 and the author is  
 7 Leis or Lees. L-E-I-S.  
 8 (Defendants' Exhibits 142 was marked for  
 9 identification by the court reporter.)  
 10 THE WITNESS: Yeah.  
 11 BY MR. HOPP:  
 12 Q And this is really just a paper on diagnosing  
 13 breast cancer; is that right?  
 14 A Yes, it has risk factors. That is the reason  
 15 it is here.  
 16 Q But does it talk about environmental risk  
 17 factors or TCDD?  
 18 A Not really, it talks -- Table 1 and Table 2,  
 19 exogenous estrogen, which would be in birth control  
 20 pills and hormone replacement. And then it says,  
 21 "Carcinogenic exposure,  
 22 particularly to viral agents  
 23 and some drugs."  
 24 Q So --  
 25 A Really, it just kind of gives you a list of

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1 them is impaired or reduced.  
 2 Q And that's the only study -- strike that.  
 3 That is the only population in which the Laden  
 4 paper found an effect with increased levels of PCB; is  
 5 that right?  
 6 A That's right.  
 7 Q And we don't know whether Sherrie Barnes had  
 8 that particular polymorphism, do we?  
 9 A No. You asked me that yesterday. So we don't  
 10 have any studies on Sherrie Barnes or anybody else on  
 11 cohort. It is not a routine thing you send to the lab.  
 12 Q You have to take a tissue sample?  
 13 A You have to do genetic studies. That is what  
 14 you have to do to find this particular variant. It is  
 15 expensive and it is possible to be done. But it is very  
 16 important, particularly in people that we don't have  
 17 disease in yet; but we want to know who is at high risk.  
 18 These kind of studies would be highly relevant.  
 19 Q Would it be possible to test Kenesha Barnes to  
 20 find out whether her mother had that particular  
 21 polymorphism?  
 22 A Well, we would have to check her dad, too. I  
 23 don't know how the inheritance goes for that particular  
 24 gene. I don't know if it can be an acquired defect. I  
 25 would have to study it to answer that question whether

1 things that have been raised as -- just kind of a  
 2 general review of the disease. So you know what you are  
 3 talking about.  
 4 Q Not very informative with respect to causation?  
 5 A Correct. I don't think he has references for a  
 6 lot of those causative factors. He doesn't give a  
 7 reference. He makes the assertion in this table.  
 8 Q The next breast cancer reference that you have  
 9 in order, number 13, Lucena, L-U-C-E-N-A; is that right?  
 10 A Right.  
 11 Q I am handing you what we have marked as  
 12 Exhibit 143.  
 13 (Defendants' Exhibits 143 was marked for  
 14 identification by the court reporter.)  
 15 BY MR. HOPP:  
 16 Q This is the Lucena paper; is that right?  
 17 A Yes.  
 18 Q It is entitled Short Communication. Is this --  
 19 is there some significance to that?  
 20 A Well, what they do is they write a very brief  
 21 paper presenting one table, maybe, which they think is  
 22 important when they want to publish it as a -- quickly,  
 23 so it is easier for the reviewers to deal with a short  
 24 paper with very little information, so you can get it  
 25 published faster.

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<p>1 Q Handing you what I have marked as Exhibit 147.  2 (Defendants' Exhibits 147 was marked for  3 identification by the court reporter.)</p> <p>4 BY MR. HOPP:</p> <p>5 Q This is the Negri study; right?</p> <p>6 A Um-hmm.</p> <p>7 Q This is a review article; right?</p> <p>8 A It is.</p> <p>9 Q And it looks at exposure to PCB and breast  10 cancer?</p> <p>11 A Yes.</p> <p>12 Q And what does Negri and/or her coauthor  13 conclude?</p> <p>14 A Well, I think the important point is that you  15 need to take into account genetic susceptibility in  16 order to explain what is going on; and that in the  17 general population, without the genetic risk factor,  18 there probably isn't an increased risk.</p> <p>19 Q So, in fact, at the concluding part of the  20 study, right above the acknowledgments, Negri and  21 coauthors say, "In conclusion, the  22 epidemiological evidence does  23 not support the hypothesis of  24 a direct relation between  25 environmental exposure to PCB</p>	<p>1 of the related compound.</p> <p>2 Q So it is generally informative, but not  3 directly related?</p> <p>4 A Correct.</p> <p>5 Q The next paper in order on your breast cancer  6 reference list is Petralia; is that right?</p> <p>7 A Yes.</p> <p>8 Q It is Petralia, 1999?</p> <p>9 A Yes.</p> <p>10 Q Petralia has written several articles on this  11 subject; right?</p> <p>12 A I have Petralia – another one of the Petralia  13 papers on the new – that I gave you. Two more, '95 and  14 '98.</p> <p>15 Q So you have got some older papers?</p> <p>16 A '98 and '99. So I have got the '99 paper, but  17 I have got an earlier '98 paper that I have added.</p> <p>18 Q Let me show you Exhibit 148.</p> <p>19 (Defendants' Exhibits 148 was marked for  20 identification by the court reporter.)</p> <p>21 BY MR. HOPP:</p> <p>22 Q This is 1999 Petralia paper?</p> <p>23 A Yes.</p> <p>24 Q And Petralia is looking at the premenopausal --</p> <p>25 I'm sorry, risk of premenopausal breast cancer in</p>
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<p>1 adulthood in the general population  2 and the risk of breast cancer"; right?</p> <p>3 A That is what he said in the abstract, which I  4 just read to you.</p> <p>5 Q And then he goes and talks about a  6 specific genetic variation like –</p> <p>7 A Right. He is really just repeating what we  8 said earlier about the CYP1A1 and the exon 7. He does  9 not mention exon 7, but in Table 5, he mentioned that.</p> <p>10 Q But for the general public, Negri is,  11 essentially, a negative paper; right?</p> <p>12 A Yes, that's the point. But when you take into  13 account the – see, there is a couple of papers that we  14 have not gone through that are reviewed here that make  15 the same point.</p> <p>16 Interaction between PCB and the CYP1A1  17 polymorphism, I think what the science has evolved to  18 the point that it takes – you can have the CYP1A1 gene  19 and not get breast cancer; but if you have it and are  20 exposed to PCBs, then your risk of breast cancer  21 increases significantly.</p> <p>22 Q And how is this study relevant to Sherrie  23 Barnes?</p> <p>24 A Well, it is like all of the others. I have  25 referred to in the PCB literature. It shows the effect</p>	<p>1 association with occupational exposure to polycyclic  2 aromatic hydrocarbons and benzene; is that right?</p> <p>3 A Yes.</p> <p>4 Q So this is an occupational study?</p> <p>5 A Yes.</p> <p>6 Q And does it look at women particularly in these  7 occupations?</p> <p>8 A It has to be.</p> <p>9 Q Premenopausal –</p> <p>10 A The rate in men, as we know, is quite low. So  11 it is women. And the exposures were variable.</p> <p>12 They took occupational history of the exposure  13 assessment for PAHs and benzene was developed to  14 determine which occupations had exposure. And then they  15 developed a matrix for that, which included the PAHs and  16 the benzene and others things, as well.</p> <p>17 Q And which exposure levels did they find to be  18 significant to increase the risk of premenopausal in  19 breast cancer in their occupation when exposed to both?</p> <p>20 A PAH and benzene, highest risk was in PAH and  21 benzene together. They found statistical significance  22 in all of them and the biggest abnormalities were in the  23 ER positive cases.</p> <p>24 Q What is that?</p> <p>25 A Estrogen receptor positive, which we looked at</p>
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ALSO ADMITTED IN  
MISSISSIPPI  
TEXAS\*\*  
ARKANSAS\*\*\*  
ADMITTED IN MISSISSIPPI ONLY†  
ADMITTED IN TEXAS ONLY††

June 13, 2005

**VIA FACSIMILE AND U. S. MAIL**

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**RE: Fred Beck, et al. v. Koppers Industries, Inc., et al.**  
**Civil Action No. 3:03CV60-P-B**

Gentlemen:

Enclosed please find a list of the defense experts and plaintiffs' counsel responsible for taking their depositions.

We intend to begin taking depositions on Monday, June 20, 2005 and be completed by July 8, 2005. As the motion deadline for all parties is July 30, 2005, we need to be through taking these depositions at least three (3) weeks before that time.

We ask that you provide us with dates for depositions of all defense experts by Wednesday of this week. If we do not have dates from you by that time, we will notice the depositions at the location the witnesses work and at our convenience. Additionally, please consider this as our request for all back-up data, notes, documents, literature or any other material compiled in the files of the

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June 13, 2005

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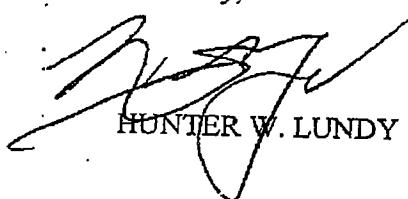
experts and/or considered by the experts in the formulation of their opinion and have it provided to our office by Friday of this week.

On another note, after this week, we will not permit the taking of any other testimony from our experts by defense counsel without a court order. You have abused this process and mislead the reasons for which you were taking the depositions. Dr. Dahlgren has been deposed four (4) days, two (2) of which occurred after the severance. During the second two (2) dates, you chose not to address the Sherri Barnes case when you knew the case was severed for trial. We will not permit the taking of anymore plaintiffs' experts in the Sherri Barnes case. Randy Horsak will be produced this week for the Sherri Barnes case only.

Again, please provide us with dates and locations for the depositions of your experts as indicated above. If not, we will notice them accordingly.

Awaiting your response.

Sincerely,



HUNTER W. LUNDY

HWL/cp

June 13, 2005  
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Defense Experts  
and  
The Responsible Attorney for Taking the Deposition

Fred Beck, et al  
v.  
Koppers, Inc., et al

Paul Anderson, Ph.D.	Evaluation of dust and sediment samples for PAHs, PCDDs and PCDFs; and Also evaluated PAH in soil samples provided by AquAeTer	David Hanchey or James Cain
Frederick B. Carlton, M.D.	Toxicologist	Hunter Lundy or Keith Prudhomme
Philip Cole, MD, Dr.PH	Epidemiologist	Catherine Cramer
Michael R. Corn	Ambient Air Testing; PAH Identifications; Soil Analysis of Dixon & Furan; and Soil Analysis of PAH and PCP :	David Hanchey or James Cain
Raymond A. Ferrara, Ph.D.	Water Resource Aspects	David Hanchey or James Cain
Robert Frehner, P.E.	Opinions: 1. Remediation; and 2. Residential Properties Located North and Northeast of Grenada Facility	David Hanchey or James Cain
Wayne M. Grip	Photointerpretation and Photogrammetry	No one assigned at this time
Philip S. Guzelian	Toxicologist	Keith Prudhomme
Gale F. Hoffnagle, CCM, QEP	Air Evaluation	Hunter Lundy
Gary Kleinrichert, CPA	Certified Public Accountant	No assigned at this time
Gary D. McGinnis, Ph.D.	History and state of the art of wood treating operations	David Hanchey or James Cain
H.M. Rollins, P.E.	Wood Preserving	David Hanchey or James Cain
Joseph J. Santoleri, P.E.	Wellons Waste Wood Fired Boiler System Design and Operation Installed at Koppers in Grenada	Andre Ducote
James Cain V. Shea, Jr., CIH, CSP	Railroad Expert	Keith Prudhomme
Walter J. Shields, Ph.D.	Evaluation of Dioxins, Furans, and PAHs	Hunter Lundy
James Cain Tate Thigpen, M.D.	Oncologist	Keith Prudhomme
Otto Wong, Sc.D.	Epidemiologist	Hunter Lundy or Keith Prudhomme

**AFFIDAVIT OF ANTHONY G. HOPP**

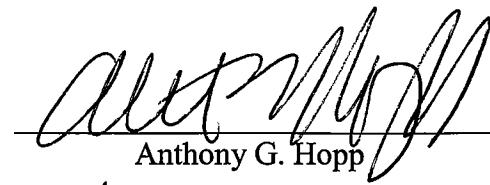
STATE OF ILLINOIS

COUNTY OF COOK:

PERSONALLY CAME AND APPEARED BEFORE ME, the undersigned authority in and for the state and county listed above, the within named Anthony G. Hopp, who after being first duly sworn, stated on oath the following:

1. My name is Anthony G. Hopp. I am an attorney licensed to practice in the State of Illinois (Bar Number 1699290). I am admitted to practice before the United States District Court for the Northern District of Illinois. I have been admitted to the Northern District of Mississippi, *pro hac vice*, for the purpose of this case. I am competent to testify to the matters contained in this Affidavit. My testimony is based upon my personal knowledge.
2. I am counsel of record for the Koppers Inc. and Beazer East, Inc. in the civil action captioned *Fred Beck, et al. v. Koppers Inc., et al.*; Civil Action No. 3:03CV-60-P-D; currently pending in the United States District Court for the Northern District of Mississippi, Western Division. This affidavit is submitted in accordance with Local Rule 37.1(a) in support of the Defendants' Motion to Compel the Completion of the Deposition of James Dahlgren, M.D., or, in the Alternative, to Bar the Testimony of Dr. Dahlgren. This affidavit outlines the good-faith attempts made by the Defendants' counsel to resolve this discovery dispute extra-judicially, and Plaintiffs' counsel's failure to cooperate in Defendants' counsel's efforts.
3. Defendants have taken four sessions of Dr. Dahlgren's expert deposition in this case. Owing to the enormous amount of material on which Dr. Dahlgren purports to rely to support his opinions, the deposition is not yet complete as to the first trial plaintiff in this case, Sherrie Barnes.
4. Defendants have repeatedly asked for Plaintiffs to provide dates for what Defendants hope will be the two final sessions of Dr. Dahlgren's deposition related to Ms. Barnes.
5. On June 13, 2005, Plaintiffs' counsel wrote to defense counsel and stated that Plaintiffs refused to produce Dr. Dahlgren for the completion of his deposition.
6. On June 20, 2005, my partner, Cal Burnton, sent, via e-mail, to Plaintiffs' counsel a Rule 37.1 Good Faith Certificate. Mr. Burnton requested that Plaintiffs' counsel execute and return the Good Faith Certificate. To date, Plaintiffs' counsel has failed to return the Good Faith Certificate.

FURTHER AFFIANT SAYETH NOT this the 22<sup>nd</sup> day of June, 2005.



Anthony G. Hopp

SWORN TO AND SUBSCRIBED BEFORE ME this 22<sup>nd</sup> day of JUNE, 2005.



Milenka S. Hrniciar

